

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

OCT -2 2013

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2013-0303-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
MARIO FRANCISCO MONTES,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2006138821001DT

Honorable Robert L. Gottsfield, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney  
By Gerald R. Grant

Phoenix  
Attorneys for Respondent

Mario Francisco Montes

Florence  
In Propria Persona

ECKERSTROM, Judge.

¶1 Petitioner Mario Montes seeks review of the trial court’s order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Montes has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Montes was convicted of aggravated assault with a deadly weapon and misconduct involving weapons. The trial court imposed concurrent, enhanced, aggravated terms of 13.25 and twelve years in prison. Montes’s convictions and sentences were affirmed on appeal. *State v. Montes*, No. 1 CA-CR 08-0635 (memorandum decision filed Mar. 23, 2010). Montes initiated a proceeding for post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record and was “unable to find any claims for relief to raise in post-conviction relief proceedings.” In a supplemental pro-se petition, Montes argued he had received ineffective assistance of trial counsel and certain entities had either tampered with evidence or failed to preserve it. The trial court summarily denied relief.

¶3 On review, Montes argues that he has been the victim of racial discrimination by the state, the courts, and his own counsel, and that counsel failed “to maintain the integrity and legal responsibilities while representing” him, “[t]o notify [him] of a plea” offer, or to object to hearsay testimony. And he again asserts that certain entities, including the investigating police department, did not preserve, or tampered with,

evidence. He also, apparently for the first time, raises a claim of prosecutorial misconduct. As the trial court correctly concluded, with the exception of his claims of ineffective assistance of counsel, Montes's claims are precluded because they were or could have been raised on appeal. *See* Ariz. R. Crim. P. 32.2(a)(2),(3).

¶4 We also agree with the trial court that Montes failed to state a colorable claim of ineffective assistance of counsel. To present such a claim, a defendant must show that counsel's performance was deficient under prevailing professional norms and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006). "A colorable claim of post-conviction relief is 'one that, if the allegations are true, might have changed the outcome.'" *State v. Jackson*, 209 Ariz. 13, ¶ 2, 97 P.3d 113, 114 (App. 2004), *quoting* *State v. Runningeagle*, 176 Ariz. 59, 63, 859 P.2d 169, 173 (1993).

¶5 In this case, as the trial court ruled, Montes's claims were "too conclusory to state a claim of ineffectiveness." Indeed, his petition for post-conviction relief consisted of single-sentence assertions with citations to transcripts. He did not provide the court with "[a]ffidavits, records, or other evidence currently available to [him] supporting the allegations of the petition," Ariz. R. Crim. P. 32.5, nor did he provide legal authority to support his claims that counsel's performance was deficient, see *State v. Donald*, 198 Ariz. 406, ¶ 21, 10 P.3d 1193, 1201 (App. 2000) (to warrant evidentiary hearing, Rule 32 claim "must consist of more than conclusory assertions"). We therefore

cannot say the trial court abused its discretion in rejecting his claims of ineffective assistance of counsel. Thus, although we grant the petition for review, we deny relief.

/s/ *Peter J. Eckerstrom*

PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ *Virginia C. Kelly*

VIRGINIA C. KELLY, Presiding Judge

/s/ *Philip G. Espinosa*

PHILIP G. ESPINOSA, Judge